

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3714 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RURAL DEVELOPMENT SOCIETY

Versus

STATE OF GUJARAT

Appearance:

MR NANDISH CHUDGAR for Petitioner

MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/97

ORAL JUDGEMENT

This petition is directed by the petitioner, Rural Development Society, Dholar, Taluka Halol, District Panchmahals against the order annexure 'C' dated 11th April, 1986 of the Government passed in purported exercise of power under sec.211 of the Land Revenue Code, cancelling thereunder the non-agricultural permission granted by Taluka Development Officer on 10th May, 1982 in favour of the petitioner of the agricultural land

bearing Survey No.59/Paiki admeasuring 41742 sq. mts. situated in Village Panelav in Halol Taluka of Panchmahals district.

The contention has been raised that the order annexure 'C' has been passed after a period of about four years when the entire construction was over. Otherwise also, the order passed by the Tal. Development Officer was within its jurisdiction and was passed after following the due process, as provided for grant of N.A. permission.

On the other hand, the counsel for the respondent supported the order impugned in this Special Civil Application.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

The respondent has not filed the reply to this Special Civil application, and as such, the averments made therein stand uncontroverted.

The counsel for the respondent does not dispute that the permission has been granted by the Taluka Development Officer for non-agricultural use of the land in favour of the petitioner on 10th May, 1982 which was sought to be taken in suo motu revision by the State Government by giving the show-cause notice dated 4th March, 1986. So undisputedly the notice has been given for revision of the order dated 10th May, 1982, after about few months short of four years. The petitioner in Para No.10 of this Special Civil Application has stated that before passing the order impugned in this Special Civil Application, the Special Secretary has not considered the reply given by the Taluka Development Officer stating that the power for granting N.A. permission was vested in him by the Taluka Panchayat, Halol, in its general meeting held on 27th December, 1978 vide resolution No.64. It is also not in dispute that the power to grant N.A. permission was delegated to the District Panchayat of Panchmahals by order of the Government dated 21st September, 1978. So it is a case where this power which vested in the District Panchayat was delegated to the Taluka Development Officer for the villages belonging to D/E category of the Taluka. It is also not in dispute that the village Panelav belongs to D/E category. The petitioner has further made a grievance that the explanation given by the Taluka Development Officer to the grounds on which his order was sought to be revised has not been considered by the Special Secretary.

One of the averments has been made that the construction was permitted to the petitioner only to the extent of 450 sq. mts. on the land of the total area of 41472 sq. mts.. So it is a construction in the area less than 1% of the total area of land. The averment is made in the petition that when the entire construction was over, the suo motu powers of the revision was sought to be revised. The further averments that the petitioner-society is working for uplift and welfare of the adivasis and other socially and economically backward castes, like the schedule tribe and schedule caste, by providing them training, and for that purpose it is exempted under the provisions of the Income Tax Act, 1961, have also not been controverted. Another fact is stated by the petitioner in this Special Civil Application that the construction has been made of a training school for the upliftment of the adivasis and other schedule tribe persons and that school is running in the premises since 1983 which has also not been disputed.

Taking into consideration the totality of the facts of this case, which are not controverted, I consider it to be appropriate to sent this matter back to the respondent to decide this matter afresh after hearing the petitioner. The petitioner is further directed to produce all the relevant materials to show (i) that the society has already constructed the training school building, (ii) the number of pupils taking the training in the school, (iii) that the institution has been recognised or any other proof that since 1983 it is continuously working, (iv) that it is for the upliftment of the adivasis and persons belonging to the schedule tribe and schedule caste, (v) that it is exempted under the Income Tax Act, 1961, (vi) the expenses incurred for construction of the building, (vii) that the building has been constructed much earlier to the taking of the action, and further relevant documents related to the controversy. The respondent shall consider this aspect of the matter and then decide the matter. In case still the respondent decides that the N.A. permission granted, is to be cancelled, then a reasoned order may be passed and a copy of the same may be sent to the petitioner.

In the result, this Special Civil Application succeeds and the order of the Special Secretary dated 11th April, 1986, annexure 'C' is quashed and set aside and the matter is remitted back to the said authority to decide the matter afresh keeping in view the aforesaid observations made by this Court. Rule is made absolute

in the aforesaid terms with no order as to costs.

zgs/-